

GAUTENG PROVINCE

DEPARTMENT OF HOUSING

RENTAL HOUSING ACT, 1999 (ACT NO. 50 OF 1999)

UNFAIR PRACTICES REGULATIONS, 2001

The Member of the Executive Council responsible for Housing in the Province of Gauteng has, Under section 15(1) (f) of the Rental Housing Act, 1999 (Act No. 50 of 1999), made these unfair practice regulations in the schedule.

SCHEDULE

Definitions

1. In these regulations, unless the context otherwise indicates, any expression or word to which a meaning has been assigned in the Act, has the meaning so assigned – and

“**common property**” in relation to a multi-tenanted dwelling means-

- (a) the land on which the dwelling is situated; and
- (b) those parts of the dwelling not reserved for exclusive use of any person;

“**services**” means the provision of water, electricity, gas services and refuse removal;

“**the Act**” means the Rental Housing Act, 1999 (Act No. 50 of 1999);

Unfair practice

2. Any person who contravenes any provision of these regulations commits an unfair practice.

Leases

3. (1) The rights and duties of a landlord and a tenant set out in these regulations apply to a landlord and a tenant even if the lease agreement between them has not been reduced to writing.

(2) A landlord and a tenant may include in a lease agreement terms and conditions not prohibited by these regulations, the Act or any other law, including rent, term of the lease, and other provisions governing the rights and obligations of the parties.

(3) A lease agreement must exclude any provision which –
 - (a) imposes a penalty for late payment of rent whether or not the penalty takes the form of administrative charge or any other form other than interest;
 - (b) excludes liability of either party for failing to comply with a duty under the lease, these regulations, the Act or any other law;
 - (c) limits or prevents either party from using the normal rights of recourse against the other because of the other's failure to comply with any duty under the lease, these regulations, the Act or any other law, unless provided for in these regulations, the Act or any other law; or
 - (d) precludes either party from being a member of a landlords' or tenants' association.

Effect of unsigned or undelivered lease agreement

4. (1) If a landlord does not sign and deliver a written lease agreement, signed and delivered to the landlord by a tenant, acceptance of rent by landlord gives the lease agreement the same effects as if it had been signed and delivered by the landlord.

(2) If a tenant does not sign and deliver a written lease agreement, signed and delivered to the tenant by the landlord, acceptance of possession of the dwelling and payment of rent gives

the lease agreement the same effect as if it had been signed and delivered by the tenant.

Disclosure

5. (1) A landlord must disclose to a tenant in writing at or before the commencement of the tenancy the name and address of the landlord, or if the landlord is a juristic person the registered office address for service of court and receipt of notices or demands.

(2) The information required to be furnished by sub regulation (1) must be updated and this sub regulation extends to and is enforceable against any successor landlord.

(3) if a landlord fails to comply with this sub regulation (1), a person authorised to enter into a lease agreement on behalf of the landlord for the purpose of that lease agreement for-

- (a) service of process and receipt of notices and demands; and
- (b) performing the obligations of the landlord under the lease agreement, these regulations, the Act, or any other law including making available all records relating to rentals collected and utility service charges, whether or not such records are in the possession or control of the landlord.

Rentals

6. (1) A tenant must pay rental due to the landlord under the lease.

(2) Rent is payable without demand or notice at the time and place agreed upon and unless a tenant is otherwise notified in writing, rent is payable at the dwelling on the first of each month.

(3) Unless the lease agreement fixes a definite period the tenancy must be for month to month.

(4) A landlord must give a tenant at least 2 (two) months written notice of an intention to increase rental.

Conditions, Obligations and Maintenance

7. (1) A landlord must –

- (a) if the lease has been reduced to writing, stamp the lease and furnish the tenant with a copy thereof within 21(twenty one) days of the signature by both landlord and tenant and the landlord may by agreement with the tenant recover cost of the stamp duty from the tenant;
- (b) let a dwelling which at the commencement of the lease is in a condition -
 - (i) that is reasonably fit for human habitation; and
 - (ii) which does not contravene the provisions of these regulations, the Act or any other law;
- (c) keep and maintain the dwelling in accordance with these regulations, the Act or any other law;
- (d) take reasonable steps to ensure that the tenant enjoys undisturbed use of the dwelling and in a multi-tenanted building that no tenant or other person conducts and activity within a dwelling which is expressly prohibited under these regulations, the Act or any other law; which shall include disturbance of the peace of the area;
- (e) formulate a set of house rules which must also take into consideration the interest of the neighbourhood with particular emphasis on preserving the peace;
- (f) maintain the common property, if any, in good order and repair;
- (g) maintain the outside of the dwelling, including the walls and roof in good order and repair;
- (h) maintain electrical, plumbing, sanitary, heating, ventilation, air conditioning systems and elevator system in good order and repair

- (i) repair any damage to the dwelling or common area caused by fair wear and tear;
- (j) provide and maintain appropriate container and places for the removal of ashes, garbage, rubbish, and other waste incidental to the dwelling and arrange for its removal;
- (k) provide all services agreed to in the lease;
- (l) effect repairs which a landlord is responsible for under the lease and as identified during inspections by the landlord or on receipt of a notice from a tenant to do such repairs, but a landlord is not liable for repairs if a tenant, his or her household members or visitors brought about the state of disrepair; and
- (m) effect repairs for which a landlord is responsible for, under the lease and as identified during inspections by the landlord or on receipt of a written notice from the tenant to do such repairs, within fourteen (14) days or such further periods as may be agreed to between the landlord and tenant.

A tenant must –

- (a) use the dwelling in a proper manner and for the purpose for which it is let, and in a manner which does not contravene these regulations, the Act or any other law;
- (b) dispose from the dwelling all ashes, garbage, rubbish, and other waste in a reasonable clean and safe manner;
- (c) maintain the dwelling in a clean, tidy and safe state of repair;
- (d) use, in a reasonable manner, all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances including elevators on the premises;

- (e) refrain from intentionally or negligently damaging, defacing, impairing, or removing any part of the dwelling or common property or knowingly permitting any person to do so, who is on the premises with the tenant's permission or allowed access to the premises by the tenant and the tenant is liable for the repair of such damage, fair wear and tear excluded, at the tenant's own cost;
- (f) return the dwelling in the same condition as the tenant received it, fair wear and tear excluded;
- (g) during the period of lease be liable to maintain; replace or repair electrical globes, fittings and switches and also be liable for the maintenance, repair or making good all water-borne taps, stoves, locks, handles, and windows where such damage has not been due to natural causes;
- (h) maintain the garden, if any, and keep the same in a neat and tidy condition;
- (i) comply with the house-rules, which are enforceable pursuant to these regulations and must respect the peace of the area; and
- (j) maintain the swimming pool, including but not limited to, all pumps, hoses and accessories, in good order and repair, subject to fair wear and tear;

Reconstruction, refurbishment, conversion or demolition

8. (1) A landlord may only-
- (a) request a tenant to vacate the dwelling if any repairs, conversions or refurbishment are necessary and cannot be properly done while the tenant remains in occupation;
 - (b) cancel lease and repossess the dwellings, without being liable for damages in terms of these lease, these regulations, the Act or any other law, in circumstances where the dwelling is in an uninhabitable condition.

- (2) In the circumstances referred to in paragraph (a) of sub regulation (1), the landlord must-
 - (a) allow the tenant remission of rental for the period during which the tenant is not in occupation;
 - (b) effect the repairs, conversion or refurbishment within a reasonable time so as to cause the tenant as little inconvenience as possible; and
 - (c) ensure that the tenant is able to return to the dwelling as soon as possible after the completion of the repairs; conversion or refurbishment.
- (3) where a landlord is required to make necessary repairs, conversions or refurbishment only to a part of the dwelling and a tenant continues to occupy the remaining part, a tenant is entitled to a remission in rental, the amount of which is proportionate to actual area from which a tenant has been deprived.
- (4) if a tenant, having been requested to vacate the dwelling, does not do so, a tenant has no claim against the landlord for injuries suffered while the dwelling is being repaired, converted or refurbished.

Eviction and Changing of Locks

9. (1) A tenant must not be evicted from the dwelling without an order of court.
 - (2) A tenant evicted from the whole or part of the dwelling by a third person has, subject to the common law, a claim for damages against the landlord.
 - (3) A landlord must not lock-out or cause a tenant to be locked-out without an order of court.
 - (4) A landlord or tenant must not change locks or doors providing access to the dwelling-

- (a) unless it is necessary to replace the locks or doors due to fair wear and tear or other reasonable causes
 - (b) without reasonable notice of the proposed change to the other; and
 - (c) unless duplicate keys are provided to the other immediately upon such change of locks.
- (5) If a tenant breaches the lease and in order to deprive the tenant access to or full a dwelling, the landlord must-
- (a) give the tenant seven (7) days notice in which to remedy the breach, unless the tenant is in default of rental payment and remains in default for a period of seven (7) days of due date, then such notice will be dispensed with; and
 - (b) obtain a valid court order to evict the tenant.

Entry

10. (1) A landlord may only enter a dwelling on reasonable notice to a tenant-
- (a) to inspect the dwelling;
 - (b) to make repairs to the dwelling;
 - (c) to show the dwelling to a prospective tenant, purchaser, mortgagee or its agents;
 - (d) to inspect the dwelling for damages as referred to in section 5(3) (e) (f) of the Act or upon notification by the landlord or the tenant of the intention to terminate the lease;
 - (e) if the dwelling appears to be abandoned by the tenant; or
 - (f) pursuant to an order of court.

- (2) A tenant must allow a landlord to enter a dwelling for the purposes set out under sub regulation (1), but such entry must be carried out at reasonable time.

House Rules

- 11. (1) A landlord must make house rules in relation to the control, management, administration, use and enjoyment of the dwelling.
- (2) A house rule is enforceable against a tenant only if-
 - (a) its purpose is to-
 - (i) promote the convenience, safety, health, or welfare of the tenant in the premises and that of the neighbours;
 - (ii) preserve the landlord's property from abuse; or
 - (iii) make a fair distribution of services and facilities available to the tenant.
 - (b) it is reasonably related to the purpose for which it is adopted;
 - (c) it applies to all tenants in the premises in a fair manner
 - (d) it is sufficiently explicit in its prohibition, direction, or limitation of the tenant's conduct and fairly informs the tenant of what is expected;
 - (e) it is not for the purpose of evading the obligations of the landlord; and
 - (f) the tenant has notice of the house rule at the time the tenant enters into the lease agreement.

Receipts

- 12. (1) (a) A landlord must furnish a tenant with a written receipt for all payment made by the tenant to the landlord.

- (b) Such receipts must be dated and clearly indicate the address, including the street number and further description, if necessary, of a dwelling in respect of which payment has been made, and whether payment has been made for rental, arrears, deposits or otherwise, and specify the period for which payment is made.
- (2) If a landlord has authorised the payment of rental and other expenses into a specified bank account and if a tenant pays the rental or other expenses into such bank account, the deposit slip constitutes the tenant's receipt and the landlord will be exempted from complying with the provisions of sub regulation(1).

Municipal Services

13. (1) A landlord who is obliged by law or in terms of the express or implied terms of the lease to provide water, electricity or gas services to a tenant, must-

- (a) provide such services;
- (b) not cause the non-supply or interrupted supply of services to a dwelling without a court order, except –
 - (i) in an emergency; or-
 - (ii) after reasonable notice to the tenant to do maintenance, repairs or renovations, but the services must be resumed as soon as reasonably possible after such emergency, maintenance, repairs or renovations;
- (c) ensure that the tenant is not exposed to the risk of interruption or loss of service provider when such a payment become due, if the tenant has made payment to the landlord in respect of the amounts due for such services;
- (d) charge the tenant the exact amount for services consumed in the dwelling if such dwelling is separately metered; and

- (e) comply with any law or obligation regarding the amount to be charged to the tenant for services, if any dwelling is not separately metered for services;
 - (f) in a multi-tenanted building not recover collectively, from the tenants for services provided in excess of the amounts totally charged by the utility service provider and the landlord; or
 - (g) must without requesting payment of any fee be obliged to provide the tenant with copies of the account of the aforesaid service provider and copies of accounts rendered to the tenants with regard to such services;
- (2) If a dwelling is separately metered for services and payment must be made directly a landlord, the landlord must provide a tenant with a monthly statement which must contain the following information-
- (a) the names of both the landlord and the tenant, as well as the physical address of the dwelling;
 - (b) the name, address and telephone number of each service provider;
 - (c) the previous and current month's meter readings;
 - (d) the actual consumption for each service and amounts charged therefore;
 - (e) the total payment due;
 - (f) the date of the next meter reading for each service; and
 - (g) the amount of any arrears.

General provisions

14. (1) A landlord must not-

- (a) intimidate, discriminate or retaliates against a tenant for exercising any right under these regulations, the Act or any other law;
- (b) preclude the tenant from establishing or being a member of any tenants committee or any similar body;
- (c) make a false representation regarding the official nature of any document or refuse to accept any notice lawfully presented or sent by the tenant;
- (d) engage in oppressive or unreasonable conduct;
- (e) fail to comply with the Tribunal complaint procedures or any agreement concluded with the Tribunal or with the tenant through the Tribunal's complain procedures;
- (f) conduct any activity which unreasonably interferes with or limits the rights of the tenant or which is expressly prohibited under the lease, these regulations, the Act or any other law; and
- (g) induce a person to waive that person's rights under these regulations, the Act or any other law, or to withdraw from proceedings before the Tribunal.

(2) A tenant must not-

- (a) cede the tenant's rights, assign the tenant's obligations or sublet the dwelling or any other part thereof to any other person without the written consent of the landlord, which in the case of subletting must not be unreasonably withheld;
- (b) allow more than the maximum number of persons specified by the landlord to reside in the dwelling;
- (c) intimidate, discriminate or retaliate against the landlord for exercising any right under these regulation, the Act or any other law;
- (d) make a false representation regarding the official nature of any document or refuse to accept any notice lawfully presented or sent by the landlord;

- (e) engage in oppressive or unreasonable conduct;
 - (f) fail to comply with the Tribunal complaint procedures or any agreement concluded with the Tribunal or with the landlord through the Tribunal's complain procedures;
 - (g) conduct any activity which unreasonably interferes with or limits the rights of the tenant or which is expressly prohibited under the lease, these regulations, the Act or any other law; and
 - (h) cause or permit any nuisance upon the dwelling and neighbouring properties; and
 - (i) induce a person to waive that person's rights under these regulations, the Act or any other law, or to withdraw from proceedings before the Tribunal
- (3) Every obligation under these regulations, the Act, or any other law and every act which must be performed as a condition precedent to the exercise of a right or remedy, imposes an obligation of good faith in its performance or enforcement.
- (4) The Tribunal is entitled to serve any document, notice or process upon a person collecting or receiving rent for or behalf of a landlord.
- (5) Any person who commits and unfair practice is guilty of an offence and liable on conviction to a fine or imprisonment not exceeding two years or to both such fine and such imprisonment.

Short title

17. These regulations are called the Unfair Practices Regulations, 2001.
